

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 8 of 2001

in

SPECIAL CIVIL APPLICATION NO 3129 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

J S SHETH

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 8 of 2001
MR PV HATHI for Appellant No.
MR HD DAVE, A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Appellants have challenged, in this Appeal, an order dated 7.12.1999, passed by the learned Single Judge of this Court, dismissing their Special Civil Application

No.3129 of 1987 on merits in absence of their Counsel.

From the order passed by the learned Single Judge of this Court it is clear that neither the learned Counsel for the petitioners nor the learned Counsel for the respondents were present. Still the learned Single Judge thought it fit to proceed with the matter in their absence and decided it on merit against the petitioners.

Learned Counsel Shri Hathi for the Appellants submitted that the matter should not have been decided on merits by the learned Single Judge in absence of the learned Counsel for the parties. At the most the petition could be dismissed for default. Shri Hathi submitted that the Appellants - petitioners have got very good case and if an opportunity was given to them to put forward their case through their Counsel then they would have pointed out to the learned Single Judge that they have got very good strong case in their favour and their petition was required to be allowed. In view of this learned A.G.P. Shri Dave for the respondents was hardly in a position to defend the order passed by the learned Single Judge.

In view of the above, without going into the legality and validity of the order dated 7.12.1999, passed by the learned Single Judge, dismissing Special Civil Application No.3129 of 1987, on merit, is hereby quashed and set aside and the matter is remitted to the learned Single Judge with a request to hear and decide the same on merits, after extending an opportunity of hearing to the learned Counsel for the petitioners. Appeal is allowed accordingly. No order as to costs.

(B.J.Shethna, J.)

Date : December 28, 2004

(Sharad D.Dave, J.)

sas